

Message Text

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ACTION L-02

INFO OCT-01 ARA-10 ISO-00 EB-07 COME-00 CIAE-00 INR-07

NSAE-00 TRSE-00 AID-05 OPIC-06 /038 W

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R 121237Z MAR 75

FM AMEMBASSY MONTEVIDEO

TO SECSTATE WASHDC 8433

UNCLAS MONTEVIDEO 0810

E.O. 11652: N/A

TAGS: BINV, UY

SUBJ: CALVO CLAUSE AND RELATED PROVISIONS

REF: A) STATE 24007, B) MVD 2367 (1974)

1. URUGUAYAN CONSTITUTION DOES NOT CONTAIN A "CALVO CLAUSE" OR SIMILAR PROVISION. FOREIGN BLSKDVUST#INCORPORATE UNDER URUGUAY'S LAWS AND ARE THEREFORE SUBJECT TO URUGUAYAN LEGISLATION AND JUDICIAL SYSTEM. THE RECENTLY ENACTED FOREIGN INVESTMENT LAW DOES NOT ALTER THIS CONDITION.

2. ARTICLE 7 OF URUGUAYAN CONSTITUTION PROVIDES FOR RIGHT OF PROTECTION NN THE ENJOYMENT OF PROPERTY. ARTICLE 8 PROVIDES THAT ALL PERSONS IN URUGUAY ARE TO RECEIVE EQUAL TREATMENT. HE LATTER ARTICLE IS INTERPRETED AS PROVIDING EQUAL TREATMENT FOR FOREIGNERS IN THE COURTS.

3. ARTICLE 32 IS RELEVANT TO QUESTIONS ASKED REFTEL AND IS QUOTED: "THE RIGHT OF PROPERTY IS INVOLABLE, BUT IT IS SUBJECT TO LAWS ENACTEDIN THE GENERAL INTEREST. NO ONE MAY BE DERPIVED OF HIS PROPERTY RIGHTS EXCEPT IN CASE OF PUBLIC NECESSITY OR UTILITY ESTABLSIHED BY LAW, AND THE NATIONAL TREASURY SHALL ALWAYS PAY JUST COMPENSATION IN ADVANCE. WHENEVER EXPROPRIATION IS ORDEREDFOR REASONS OF PUBLIC NECESSITY OR UTILITY, THE PROPERTY OWNERS SHALL BE INDEMNIFIED FOR LOSS OR DAMAGES THEY SUFFER ON ACCOUNT OF DELAY, WHETHER THE

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EXPROPRIATION IS ACTUALLY CARRIED OUT OR NOT, INCLUDING

THOSE INCURRED BECAUSE OF VARIATIONS IN THE VALUE OF THE CURRENCY."

ARTICLE 232 MODIFIES THE "IN ADVANCE" REQUIREMENT SLIGHTLY BUT IN A MANNER NOT RELEVANT TO SUBJECT.

4. FOREIGN INVESTMENT LAW MAKES NO MENTION OF ARBITRATION. THOSE COMPANIES INVESTING IN URUGAY UNDER TERMS OF THIS LAW ARE SUBJECT TO ARTICLE 35 WHICH STATES AMONG GENERAL RULES "IN ALL OTHER RESPECTS, FOREIGN CAPITAL ENTERPRISES SHALL BE GOVERNED BY THE LAW AND REGULATIONS OF THIS COUNTRY." CONSTITUTION DOES REQUIRE (CHAPTER IV, ARTICLE 6) ARBITRATION CLAUSE IN INTERNATIONAL TREATIES. HOWEVER, THIS WOULD NOT APPLY TO DOMESTIC LAWS LIKE THE FOREIGN INVESTMENT LAW.

5. COMMENT: URUGUAYAN COURT SYSTEM HAS TRADITIONALLY PROVIDED EQUAL TREATMENT TO FOREIGN AND DOMESTIC INVESTORS. EMBASSY UNDERSTANDING OF USG POSITION IS THAT FOREIGN INVESTOR'S "RIGHT TO HOME GOVERNMENT INTERVENTION" (REFTEL) IS NOT AUTOMATIC BUT MUST FOLLOW A DETERMINATION THAT A "DENIAL OF JUSTICE", AS THAT TERM IS UNDERSTOOD IN INTERNATIONAL LAW, HAS TAKEN PLACE. INFORMAL DISCUSSION WITH GOU OFFICIALS HAS CONFIRMED THAT RECOURSE TO HOME GOVERNMENT ASSISTANCE IS APPROPRIATE ONLY AFTER LEGAL REMEDIES THROUGH THE LOCAL COURT SYSTEM HAVE BEEN EXHAUSTED. SIRACUSA

NOTE BY OCT: # AS RECEIVED.

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: INVESTMENT LAW, FOREIGN INVESTMENTS
Control Number: n/a
Copy: SINGLE
Draft Date: 12 MAR 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975MONTEV00810
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750086-1093
From: MONTEVIDEO
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750359/aaaacamc.tel
Line Count: 90
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION L
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 75 STATE 24007, 75 MVD 2367, 75 (197
Review Action: RELEASED, APPROVED
Review Authority: woolflhd
Review Comment: n/a
Review Content Flags:
Review Date: 23 SEP 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <23 SEP 2003 by SilvaL0>; APPROVED <31 DEC 2003 by woolflhd>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: CALVO CLAUSE AND RELATED PROVISIONS
TAGS: EINV, UY
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006